

(a) Returns an answer and requests a hearing, the complaint, answer, and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for the proceeding; or

(b) Returns written assurances which the Secretary determines to be unsatisfactory, the establishment shall promptly be informed of this determination in a written notification. Said notification shall briefly set forth the reason the assurances were deemed unacceptable and shall offer the establishment the right to file an answer to the original complaint and to request a hearing with respect to the merits or validity of the suspension action. If any establishment so notified files an answer to the original complaint and requests a hearing, a copy of the complaint, answer, and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for the proceeding.

(c) Returns written assurances which the Secretary determines to be satisfactory, the suspension shall be terminated and the establishment informed of this action as soon as possible.

Subpart E—Criminal Violations

AUTHORITY: Sec. 406, Pub. L. 99-641, 100 Stat. 3571; 21 U.S.C. 606 note.

§335.40 Opportunity for presentation of views before report of criminal violations.

(a) Except as provided in paragraphs (a)(1) through (5) of this section, before any violation of the Federal Meat Inspection Act is reported to the Department of Justice by the Secretary for criminal prosecution the Secretary must give reasonable notice to the sus-

pected violator that the Secretary intends to report the violation for prosecution and give the suspected violator an opportunity to present the violator's views to the Secretary with respect to such proceeding.

(1) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in the alteration or destruction of evidence, or where disclosure could result in injury to persons or property.

(2) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in flight of a suspected violator to avoid prosecution.

(3) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in compromising special investigative techniques, such as undercover or other covert operations.

(4) Notice and opportunity need not be provided when the impending criminal referral involves suspicion of bribery and related offenses, or clandestine slaughtering and/or processing operations.

(5) Notice and opportunity need not be provided when the impending referral is part of an investigation involving non-Act violations, and the Act and non-Act violations are jointly referred for prosecution.

(b) A notice of opportunity to present views will be sent by registered or certified mail, summarize the violations that constitute the basis of the contemplated prosecution, and describe the procedures for presentation of views. Any information given by a respondent, orally or in writing, shall become part of the Department's official record concerning the matter. The Department is under no obligation to disclose evidence to the suspected violator.

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